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NO. 469

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

ATTY M. JACKSON, *Petitioner*

versus

BURR LAMBERT, *Respondent*

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

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AUTHORITIES CITED

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Taylor vs. Catalon, 166 S. W. 2d 102

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SUMMARY OF THE MATTER INVOLVED

F. B. Jackson, Jr. procured a divorce from the petitioner, Mrs. F. B. Jackson, Jr., without having the community property rights adjudicated. The divorce was procured in Arkansas, but the parties were resident citizens of Texas and owned community property consisting,

in part, of a one-half interest in an oil well drilling business owned by a partnership composed of the said F. B. Jackson, Jr. and the respondent, Burr Lambert, which business was carried on for many months and possibly years after the divorce was granted (R. 9, 64) without any offer of settlement or dissolution by any of the parties and without any complaint or objection to the continuance of the business by anyone concerned (R. 9, 64, 51, 22).

The Circuit Court of Appeals and the trial court held that under these circumstances the petitioner never became a partner, and that she was not entitled to an accounting for her interest in the partnership business in any event.

It is our contention that immediately upon the granting of the divorce, the petitioner became a tenant in common with her ex-husband in his one-half of the partnership business, and, since the partners, Lambert and Jackson, continued to carry on the business in the same way for months or years without settling or offering to settle with the petitioner, they impliedly accepted her as a partner, and, since she raised no objection to the continuance of the business in that manner, she impliedly consented to become a partner, and, therefore, the partnership relation arose by implication.

If the court should reject the partnership theory, the petitioner is still entitled to an accounting for her one-half interest in her husband's interest in the partnership business, because it is undisputed that the partnership of Lambert and Jackson, at the time of the divorce, was a going concern and possessed a considerable amount of property.

BASIS FOR THE SUPREME COURT'S JURISDICTION

We think the court has jurisdiction of this case, because the decision of the Circuit Court of Appeals and that of the trial court are at variance with the holdings of the Supreme Court of Texas and the Supreme Court of the United States in that those courts held that (1) the partnership relation never arose between the petitioner and F. B. Jackson, Jr. and Burr Lambert, and (2) that, under the circumstances of this case, the petitioner did not have such an interest in the partnership business as would entitle her to an accounting.

In Taylor vs. Catalon, 166 S. W. 2d 102, the Supreme Court of Texas held that upon the dissolution of the marital relations by divorce, the husband and wife became tenants in common of their community property.

In Clay vs. Field, 138 U. S. 474, 34 Law Edition, 1044, 1047, the Supreme Court said:

> "The general principle of law undoubtedly is, that on the dissolution of the firm by the death of one of the partners, it is the survivor's duty to settle up the partnership affairs within a reasonable time, and pay over to the representatives of the deceased partner the amount due them; and if he takes the responsibility of continuing the business of the firm, and using the property of the partnership, he become liable for losses that may occur, and it is the option of the representatives of the deceased partner either to insist upon a division of the profits, which may be made in thus carrying on the business, or upon being paid the amount of the deceased's share in the capital, with lawful interest thereon, after deducting his indebtedness to the firm."

THE QUESTIONS PRESENTED

The questions presented are (1) whether the petitioner ever became a partner in the Lambert and Jackson partnership and was entitled to an accounting as such, and (2) whether the petitioner was entitled to an accounting for her one-half interest in her husband's interest in the partnership business upon the theory of tenancy in common.

REASONS FOR ALLOWANCE OF THE WRIT

The decision of the Circuit Court of Appeals herein is in conflict with the decision of the Supreme Court of the United States on the same matter and has decided an important question of law in a way probably in conflict with applicable local decisions. We also think that on account of the importance of the question here raised, the writ should be allowed.

The Circuit Court of Appeals and the trial court have held herein that the divorced wife of the said F. B. Jackson, Jr. had no right to an accounting as a partner in the partnership business owned by her husband and another at the time of the divorce, although it was undisputed that the business was carried on for many years after the divorce in complete disregard of the rights of the petitioner, and this holding, we think, is in conflict with the prior decisions of the Supreme Court of the United States. The lower courts also held that the petitioner was not entitled to an accounting as a tenant in common, which holding is in conflict with the prior holding of the Supreme Court of the State of Texas.

Premises considered, the petitioner respectfully prays that a writ of certiorari be granted herein in order that the errors complained of may be corrected.

Respectfully submitted,
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